IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1909 OF 2005

Sou. Jijabai Ramnath Khade .. Petitioner
V/s.
Pandurang Jagganath Gurav & Ors. .. Respondents

Mr. R.M. Agrawal for the Petitioner
Mr. N.V. Bandiwadekar for the Respondent Nos. 1 to 4

CORAM : B.H. MARLAPALLE, J.
DATED : 03.05.2005

P.C.:-

1. Heard Mr. Agarwal, the learned counsel for the Petitioner. There is no dispute that originally the Suit was registered as RCS No. 184/1985 and the present Petitioner was impleaded as Defendant No. 3. Relief claimed in the Suit was for declaration of the sale transaction in favour of the Defendant Nos. 2 and 3 by Defendant No. 1, as illegal and consequently for restoration of the Suit land admeasuring 1 Hectare 56 R to the Plaintiffs. A joint written statement was filed by Defendant Nos. 2 and 3 on or about 16.10.1986 and in paragraph 6 of the said written statement, which was a substantive defence, the Defendant Nos. 2 and 3 had denied the alleged mental status of Defendant No. 1 and transaction being illegal and surreptitious and against the welfare of the Plaintiffs.

2. Defendant No. 2 arrived at compromise and returned 50 R land to the Plaintiffs. The compromise pursis was placed before the Trial Court at Exhibit 31 on or about 12.10.1993. It was only thereafter, that the present

Petitioner realized his inability to defend the Suit any

further and submitted the amendment application at exhibit 31 on or about 25.3.1994. The following new pleas have been sought in the said application :-

(a) The Plaintiffs have no right to file the Suit.

(b) The Suit filed was beyond limitation.

(c) The age of the minor children mentioned in the Plaint was wrong.

(d) Land was sold by the Defendant no. 1 for the welfare of the joint family.

The Trial Court noted that the last defence would substantially change the nature of the pleadings and such pleadings were not incorporated in the original written statement and such amendment if allowed, would cause prejudice to the Plaintiff and, therefore, the amendment application has been rejected. The amendment application is not rejected because of delay. The reasoning given by the Trial Court, though short, cannot be held to be perverse or manifestly erroneous, so as to interfere under Article 227 of the Constitution.

4. The Petition is, therefore rejected summarily.

(B.H. MARLAPALLE, J.)